

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5564 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

-----  
RAJENDRASINH JUWANSINH SOLANKI

Versus

DISTRICT MAGISTRATE

-----  
Appearance:

MR VIJAY H PATEL for Petitioner

Mr. K.T. Dave, A.G.P. for Respondent No.1,2 & 4.

Ms. Parinda J. Davawala, for Respondent No. 3

-----  
CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 24/09/1999

ORAL JUDGEMENT

Heard learned Advocate Mr.V.H. Patel for the petitioner, learned A.G.P. Mr. K.T.Dave for the respondents nos.1, 2 and 4 and Advocate Ms. Parinda J. Davawala for the respondent no.3.

1. That the detention order dated 6-7-1999 passed by the respondent no.1-District Magistrate, Ahmedabad

against the petitioner in exercise of powers conferred under Section 3(2) of the Prevention of Blackmarketing & Maintenance of Supplies of Essential Commodities Act, 1980 ( "PBM Act" for short) is challenged in the present petition under Article 226 of the Constitution.

2. The grounds of detention supplied to the petitioner and produced at Annexure "C" to the compilation inter alia indicate that the petitioner is the Chairman of one Bhadrakali Gram Seva Sahkari Mandali Ltd. at village Bhankoda, Taluka Rampura, District Ahmedabad. The petitioner has been administering the fair price shop of the said Sahkari Mandali under licence no. 279/91. That on 10-5-1999, the Mamlatdar and Executive Magistrate on information raided the premises of one Harshadbhai Jesingbhai Patel at village Ashoknagar and during the search, blue kerosene stored in two barrels approximately of 340 litres was found from house no. 632 while during search of house no. 3/121, 345 litres of blue kerosene stored in two barrels were found. That on further inquiry said Harshadbhai stated before the authority that he has acquired said kerosene from the present petitioner at the rate of Rs. 5/- per litre to use the same in his tractor for agricultural operation. That the Civil Supplies Department inquired into the matter further and on cross checking, it was found that the petitioner has supplied the said kerosene to said Harshadbhai by preparing false bills without making any corresponding entry in the ration cards of nine card-holders who were entitled to receive twenty-four litres of kerosene and one card-holder who was entitled to receive eight litres of kerosene. That it was also found that in the month of March, 1999, the petitioner made false entries in the ration card of two card-holders by stating issuance of eight litres instead of actual issuance of five litres and thus by making similar false entries in the ration cards of different card-holders blackmarketed forty-seven litres of kerosene as per particulars given in list "A". That as per particulars given in list "B", the petitioner had prepared sale bills in the name of seventeen card-holders without making actual supply and has blackmarketed 144 litres of kerosene. That on account of illegal disposal of controlled kerosene, causing irregularity in making necessary entry in the ration card and preparing false sales bills, criminal case vide CRs nos. 57/97 and 87/97 were registered against the petitioner at Detroj Police Station on 11-1-1998.

3. The District Magistrate in consideration of facts recorded in the FIR of CR no. 57/97 and 87/97 dated

11-1-1998 as well as report made by the Mamlatdar and Executive Magistrate after the inquiry and raid carried out on 10-5-199 and 11-5-1999 concluded that the petitioner is a headstrong person and has been indulging in the activities of blackmarketing which is likely to affect prejudicially to the supply of and maintenance of essential commodities. That resort to general provisions of law are not likely to prevent the petitioner from continuing said activity, and hence, passed the impugned order.

4. The petitioner has challenged the impugned order on numerous grounds. Learned Advocate Mr. V.H. Patel appearing for the petitioner has submitted that grounds of detention supplied to the petitioner, copy of which is produced at Annexure "C" does not disclose any fact against the petitioner in respect to illegal acquisition or disposal of essential commodity like wheat and sugar etc. However, the impugned order dated 6-7-1999 copy of which is produced at Annexure "A" contains a statement that " With a view to preventing him for acting in a manner prejudicial to the maintenance of supplies of essential commodities like kerosene, wheat and sugar, essential to the community, it is necessary to do so."

5. Thus, though there is no case against the petitioner in respect to unlawful blackmarketing of commodity like wheat and sugar, the detaining authority has stated the same as one of the ground in the order while no particulars are set out in the grounds of detention supplied to the petitioner, and therefore, the impugned order of detention not being in consonance with the grounds of detention, is invalid, illegal, and as such, requires to be quashed and set aside.

6. Mr. Patel, learned Advocate appearing for the petitioner has referred to and relied on the observations made by this Court in the matter of GULABBHAI BUDHABHAI PATEL VS. DISTRICT MAGISTRATE, SURAT, (1990 G.L.R. 1288) wherein it is observed that where the order is passed on one ground whereas the grounds supplied refers to a different matter, non application of mind on the part of the detaining authority is disclosed and the order is bad. Mr. Patel has also relied on the observations made in the matter of T.N. VS. SENTHIL KUMAR AND ANR. (1999 SCC (CRI.) 299 to support the submission that casual approach of the detaining authority in complying with the procedural safeguards prescribed by the constitutional guarantee results into infringement of a right conferred on a citizen under Article 22(5) of the Constitution, and thereby, renders the detention order illegal.

7. It is further submitted by Mr. Patel that, in the instant case, while formulating the grounds of detention and preparing the order of detention, the detaining authority has failed to take necessary care to elaborate the particulars while passing the impugned order. That additional statement in respect to essential commodity like wheat and sugar etc. stated in the impugned order confused the petitioner-detenu which hampered the process of making effective representation against the said detention, and thereby, also the impugned order has become illegal and the continued detention of the petitioner being illegal, the impugned order is required to be quashed and set aside.

8. Lastly, it is submitted by Mr. Patel that vide representation dated 17-7-1999, the petitioner has made a grievance that the detaining authority has failed to provide the extract of "K" register as observed in the grounds of detention. That vide reply dated 26-7-1999, the District Magistrate forwarded the copy of the same without any proper explanation. Mr. Patel has submitted that the detaining authority ought to have supplied the said documents pari passu to the grounds of detention to the petitioner. Non supply of the same has rendered the detention order illegal. To support the said submission Mr. Patel has referred to and relied on the observations made by the Supreme Court in the matter of KAILESH PANDEY VS. STATE OF U.P & ORS ( 1984 SCC (CRI.) 265 at Para 2.

9. As against that learned A.G.P Mr. K.T.Dave made an attempt to salvage the issue by relying on the observations made by the Supreme Court in the matter of ABDUL REHMAN VS. STATE OF MAHARASHTRA (1996 SCC (CRI.) 83) to support the submission that if the detaining authority has made incidental and incorrect factual statement in the detention order, it could not vitiate the entire order. That, in the instant case, essential commodities like wheat, sugar etc. are incidentally mentioned inadvertently by the detaining authority in the impugned order, and thereby, it could not be said that the detention order is illegal.

10. On appreciation of facts apparent from the grounds of detention Annexure "C" to the petition, it appears that the sponsoring authority has produced the material in three different forms registers "A", "B" and "C" showing illegality alleged to have been committed by the petitioner in preparing false bills and noting false quantities of supply in ration cards to acquire blue kerosene meant for supply to the card-holders and has

disposed the said quantity of kerosene to said Harshadbhai by taking higher rate and making illegal profit. Under the circumstances, the particulars stated in "K" register are vital information on which the detaining authority has applied its mind while formulating the grounds of detention and the copies of the said document should have been supplied to the detenu alongwith the detention order and grounds of detention so as to facilitate the detenu to make effective representation against the detention. It is needless to say that breach of the said constitutional imperative has rendered the impugned order illegal, and as such, the petition deserves to be allowed on that point alone.

11. On the basis of the aforesaid discussion, the petition is allowed. The impugned order dated 6-7-1999 passed by the District Magistrate, Ahmedabad against the petitioner is hereby quashed and set aside. The petitioner-detenu-Rajendrasinh Juwansinh Solanki is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

\*\*\*\*\*

stanley-akt.